

PUERTO RICAN LEGAL DEFENSE AND EDUCATION FUND, INC.

A HISTORY OF THE LITIGATION

1982 - 1987

EMPLOYMENT DISCRIMINATION

As in the past, our more recent class action litigation has involved public employment. The reasons are obvious. First, because hiring and promotion are based on civil service examinations, class actions are clearly appropriate to challenge the disparate impact caused by those examinations. Secondly, public employers are large employers giving us the requisite numbers needed to seek class action. Lastly, public employment continues to provide available routes to stable jobs for Puerto Ricans and Hispanics.

During the period since the last summary report in 1982, we have filed successful challenges to a sergeant promotional examination (leading to quota promotions with back pay back seniority Hispanic Society 3) and to a lieutenant promotional examination (leading to a settlement providing for Puerto Rican Legal Defense and Education Fund participation in the preparation of the next examination Hispanic Society 2).

The long history of litigation against the New York City Police Department has lead to the development of new strategies in this area. The City has learned from its defeats and is now contracting with qualified psychologists to prepare their new examinations. This seriously reduces our likelihood of success on this type of litigation for two reasons. One, the focus of litigation is whether the examination is professionally prepared in accordance with established guidelines. The contractors, unlike their civil service predecessors, are skilled in technically doing a proper job. Two, the Courts have become much less

receptive to this type of "second generation" litigation. They are reluctant to rigorously apply the professional standards of test construction, but rather the Courts look at the professional standing of the contractors and whether they have done as good a job as could be expected under the circumstances. As a result, we have decided that it may be fruitless to challenge new police examinations and have through settlements obtained the right to participate in new test construction. We have done so are two entry level police officer exams and will be involved in the next sergeant and lieutenant examinations. Being an insider gives us the advantage of helping shape the examination and training process to help eliminate adverse impact. Our expert has a great deal of leverage. If he recommends something and the City does not follow his recommendation, we are in a good position to challenge the examination if there are adverse results. The obvious disadvantage of being insiders is that we cannot realistically challenge tests that were prepared in ways that followed our expert's suggestions. The strategy so far has been successful. Larger numbers of Hispanics are passing and being hired from the entry level tests than ever before. Moreover, as insiders, we have forced the City away from strict rank ordering of test results.

Outside of the police department, we, however, are still looking to litigation as a way of bringing about change. A suit is being prepared against the New York City Department of Sanitation for challenging the examination for first level supervisors. We also have a lawsuit pending against the United States Postal

Service in Connecticut that involves entry level tests. Osorio v. Tisch. During the period we also successfully set aside an examination for Counselors in the New York City Division of Youth. Hispanic Coalition v. Valenti. Finally, our lawsuit challenging the veteran credit provisions in New York opened up numerous opportunities for Vietnam Era veterans who enlisted in Puerto Rico. Soto-Lopez v. New York City Civil Service Commission.

We continue to seek class action litigation against private employers without much success. The problem continues to be one of numbers. Puerto Ricans and other Hispanics often dominate the jobs and industries in which they work: garment industry, light manufacturing and service jobs. While there is much exploitation in these jobs, we have not been able to identify patterns of discrimination susceptible of class action litigation. Most of the complaints involve discharge. On the other hand, in white collar jobs, there are relatively few Hispanics either seeking them or holding them. Thus, again we are thwarted in seeking class action status. The complaints we get for these jobs almost always involve discharge. Hispanics seeking or holding these jobs are reluctant to complain of discrimination fearing, at a minimum, being labeled as "trouble maker" and ending their opportunities for further advancement.

Nevertheless, our docket of private employment cases has expanded greatly since the last report. Notable among them are Del Valle v. Local 14 - 14B International Operating Engineers (involving a construction union's training and membership prac-

tices); Ramos v. Flagship International (discharge of Hispanics by airline caterer) and Rodriguez v. District 1199 (involving the rights to Spanish language union elections). We continue to carry many other individual private employment cases which we took earlier as training vehicles for the Visiting Attorneys. However, we currently are not accepting any more individual claims of employment discrimination without a demonstration that the case has impact potential.

Two non-class action areas of impact litigation continue to be a source of new cases. One area involves individuals who being retaliated against for fighting for the rights of Hispanics or persons who are discriminately denied jobs or promotions in employment areas where Hispanics are conspicuously poorly represented. Cases of this type include: Rodriguez v. Chandler (professor denied tenure for championing the rights of Hispanics on campus); Falu v. SUNY at Old Westbury (three professors and one student counselor denied tenure or continuing employment on a campus with many Hispanic students, but few Hispanic professors); Irizarry v. New York City Housing Authority (Puerto Rican discriminatory denied promotion to second highest position in New York City Housing Authority police force); Muniz v. New York City Department of Social Services (Puerto Rican leader of Latino workers discharged); and Malave v. Tisch (Puerto Rican leader of Hispanic workers at Hartford post office not promoted for complaining about discrimination against Hispanics).

The other area of impact litigation involves cases in which we seek to establish new legal precedents of general application.

We have continued to pursue cases in which Hispanics are prohibited from speaking Spanish on the job. We have successfully resolved a discriminatory discharge of Puerto Rican typesetter discharged for speaking Spanish. Gonzalez v. Colahan-Saunders. We have also filed E.E.O.C. charges on two similar cases. Puerto Rican Legal Defense and Education Fund, Inc. v. Elizabeth; and Mistral v. Jersey City Housing Authority.

Our amicus brief filings have continued to focus on issue primary importance to civil rights. We filed amicus briefs in the recent Supreme Court cases involving affirmative action. Johnson v. Transportation Agency; United States v. Paradise; Local 28 v. E.E.O.C.; and Local 93 v. City of Cleveland. We have recently filed a brief in the Supreme Court on the issue of whether the Civil Rights Act of 1866 prohibiting employment discrimination covers discrimination on the basis of national origin or ethnicity. St. Francis v. Al-Khazraji. In the Second Circuit, we filed an amicus brief on the statute of limitations for federal constitutional cases. Okure v. Owens. In the Ninth Circuit, we filed an amicus brief on the rights to bilingual interpreters at union meetings in a predominately Hispanic union. Zamora v. Local 11. Our position has prevailed in all these cases except St. Francis and Zamora which have yet to be decided.

HOUSING DISCRIMINATION

We continue to focus on housing discrimination cases particularly involving low and moderate Hispanics. However, we have expanded our docket to include issues involving displacement and gentrification in Hispanic communities.

In the area of housing discrimination, we have filed several new lawsuits. Ramos v. Proulx is a class action that alleges a pattern and practice by the city of Holyoke in Massachusetts of condemning and razing the housing of Hispanics and at since time putting all their redevelopment efforts into middle class housing. Murgeitio v. United Jewish Council was a challenge to the marketing plan for elderly housing on the lower east side. Mariani v. Banat Realty and Quinones v. Nescie, both involve the discriminatory denial of rental housing in predominately white neighborhoods, Bay Ridge, Queens and Staten Island. We hope that large damage awards will discourage other landlords from discriminating and encourage more Hispanics to file charge of discrimination.

In our new area of displacement and gentrification, we have filed a case called Salvador v. City of New York. In Salvador, two buildings held by the City after tax foreclosures were transferred with financial benefit packages to a private developer for renovations. The result of the transfer will be to raise the rents and force out the existing Hispanic tenants. The City's action is the first of many anticipated attempts to transfer its occupied in rem housing into private hands. The lawsuit seeks to compel the City to allow the tenants to take

over the buildings as cooperatives and renovate them themselves.

We also filed an amicus brief in Chinatown Staff and Workers Assoc. v. City of New York in the New York State Court of Appeals. The Court held in that case, consistent with our brief, that one of the environmental factors that need be considered before large projects are undertaken is the impact on the neighborhood character and whether it would displace poor people.

CRIMINAL JUSTICE

We continue to be very much involved in issues of police misconduct involving unnecessary brutality against Hispanics as well as failure to pursue those who commit racial violence. Our activities are largely organizing and networking. Cases of this type have been referred to cooperating counsel. During this period we settled one of our few cases of police brutality, Castrillo v. Day.

EDUCATION RIGHTS

Bilingual education has remained as the cornerstone of the Fund's education rights docket since September 1981. Although the public policy debate over the legitimacy of bilingual education has not subsided the legal principles have not greatly eroded. The Equal Educational Opportunities Act is still a viable method of attacking language barriers. The last five years or so have also seen the Fund go beyond the confines of bilingual education.

For example, the Fund recently relied upon the First Amendments proscriptions to outlaw the physical and blatant segregation of Puerto Rican and Hasidic school children in a lawsuit challenging a school district's implementation of a federal remedial program in Morales v. Quinones. The Fund also successfully challenged a private school's procedures for testing services when they discriminated against Puerto Rican applicants in Vega-Rivera v. Educational Records Bureau. Finally, in Pagan v. Bridgeport Board of Education the Fund based its lawsuit on the districts' failure to provide meaningful educational opportunities to permit all Puerto Rican graduates to obtain minimal and functional literacy skills. The lawsuit was settled on the basis of an action plan at one elementary school that has over the last two years elevated the reading levels of the participants by over one grade above average.

Bilingual education litigation has closely paralleled our previous docket. Bilingual programs in vocational education were secured in Detroit in LASED. Bilingual programs were saved in

school desegregation cases in Yonkers, New York (U.S. v. Yonkers Board of Education); Boston, Massachusetts (Morgan v. McDonough) and Wilmington, Delaware (Evans v. Buckaman). In New York City monitoring of Aspira v. Board of Education consent decree involved going back to court on contempt proceedings in 1982-83. This effort forced the Board to rescind its unilateral attempt to modify the cut-off scores on the language assessment examination and thereby restricting entitlement. Recent efforts at monitoring have revealed a pattern of non-compliance which may lead to enforcement proceedings. In Central Islip, Long Island the Fund successfully thwarted an attempt to dismantle a bilingual education program after the federal authorities retreated from their enforcement obligations in the case of Jimenez v. Leitch. Finally, in Jersey City, New Jersey the Fund's case, Puerto Rican Education Coalition v. Board of Education resulted in a major consent decree that completely overhauled the district's method of providing language services in 1983 and forced it use a cluster method to centralize its bilingual programs.

The plight of handicapped or classified Latino students in need of bilingual education has been directly addressed by the Fund as well. In Dyrcia S. v. New York City Board of Education the Fund and other legal offices are still negotiating and often-times litigating the enforcement of a comprehensive federal judgment to reduce the waiting lists of children awaiting evaluations and placements. In 1987 nearly 10,000 students were not processed within the legal time deadlines. In Jersey City the Puerto Rican Education Coalition case, noted above, has recently

been reactivated to address these same concerns. Unfortunately, the matter in Jersey City has now focused on the widespread use of monolingual clinical teams to evaluate limited English proficient students.

VOTING RIGHTS

The Fund's work in securing voting rights and access to the political process has over the last five years taken on a different approach. The change is understandable given the development of language rights in this area. Our previous docket from 1972 through 1981 was dominated by cases which enforced section 4(e) of the Voting Rights Act. This law enabled Puerto Ricans to vote despite English literacy requirements at the state level. Next came bilingual ballots and registration forms. After 1975, however, the Fund's success was translated into congressional law and the benefits were shared with other language minorities. Nevertheless, there was still some activity in the area of bilingual assistance. In Bridgeport, Connecticut, Puerto Rican Coalition v. O'Tremba, was instantly victorious in securing compliance with the bilingual provisions of the Voting Rights Act. In Newark, New Jersey the Fund was able to force similar assistance in elections for the public body that distributed federal anti-poverty funds known as Community Service Block Grants in Club del Barrio v. United Community Corp..

Since 1981, however, our docket has primarily reflected our efforts to secure the voting strength that our community should have under fair electoral systems. Our challenge to discriminatory redistricting plans have been very successful. In New York the Fund successfully enforced Section Five's preclearance guarantees and halted a primary election in 1981 until the redistricting plan was precleared. Geneva-Valentin v. Koch.

The Fund's role in the subsequent Justice Department proceedings led to a denial of preclearance and a new and fairer plan for the New York City Council. In 1982 the Fund also participated in the consolidated litigation that forced the New York State legislature to enact a plan despite their resistance to do so in Flateau v. Anderson. The Fund was also served the Court as amicus curiae in the Andrews v. Koch litigation which invalidated as unconstitutional the City Council's at-large councilmanic seats.

In Chicago, the Fund collaborated jointly with MALDEF as co-counsel for the first time. The combination brought unprecedented success. First, the state redistricting plan was held invalid under the pre-1982 revisions of Section Two of the Voting Rights Act which required a demonstration of discriminatory motive. That case Del Valle v. State Board of Elections resulted in the first latino ever elected to a seat in the state's capitol. Chicago's councilmanic ward plan was next and it too was held to unlawfully discriminatory in Velasco v. City Council of Chicago. The Velasco case resulted in three Latino alderman elected; the first in over 60 years. Not all of the Fund's efforts were successful, however. In Philadelphia the Fund could not meet the burden of proving intentional discrimination in a pre-1982 Section Two case challenging a state redistricting plan in Hispanic Coalition on Reapportionment v. Legislative Reapportionment Commission. And in New York City a similar political entity addressed in the Club del Barrio case, above, was held not to be covered under Section Five's preclearance guarantees in Merced v. Koch.

Finally, the Fund is also focusing on election day practices aimed at disenfranchising Puerto Rican voters. In Jersey City, New Jersey the Fund is litigating such a case in Vargas v. Calabrese. It is a challenge to the powers of polling site election personnel to broadly stop voters from voting by excessively challenging them on residency grounds.

GOVERNMENT BENEFITS

The Fund has always litigated matters concerning government benefits and entitlements from the standpoint of securing language rights for Puerto Ricans. This outlook has not changed in the last five years. In 1983 the Fund successfully settled its challenge to the New York State Department of Labor's Unemployment Insurance Division in Barcia v. Sitkin. This case was addressed to the procedures used during the appeals of the denial of benefits. Translations, interpreters and periodic needs assessments were all part of the settlement. The Fund also participated as amicus curiae in the appeal of Soberal-Perez v. Schweiker a case which challenged the Social Security Administration for publishing termination notices only in English. Although the Second Circuit held that Title VI of the Civil Rights Act did not apply to the Social Security Administration, its opinion stresses the appropriateness of using English language notifications under the due process clause.

OTHER LITIGATION

The Fund has also litigated a number of other issues affecting Puerto Ricans or directly affecting the Fund. In NAACP v. Devine, the Fund and other legal defense funds challenged federal regulations which prohibited our organizations from participating in the combined federal campaign that solicits donations from federal employees. The challenges were successful on first amendment grounds and forced the inclusion of the legal defense funds for over two years. Ultimately, however, the Supreme Court upheld the governments right to exclude some organizations. In PRLDEF v. Grace the Fund litigated a defamation lawsuit against J. Peter Grace for his racist remarks about Puerto Ricans and food stamps. The lawsuit was dismissed but not without constructive public debate and a sharp judicial opinion. During the selection process for a new chancellor for New York City Schools PRLDEF filed an administrative charge (PRLDEF v. Board of Education) when a lesser qualified white was chosen in lieu of a very qualified Puerto Rican. The charge was moot when the state refused to accept the original decision of the Board of Education. Finally, the Fund wrote an amicus curiae brief on behalf of itself and eight other public interest law offices to uphold the authority of Mayor Koch to issue Executive Order 50 that prohibited employment discrimination on numerous grounds in Under 21 v. City of New York. The Executive Order was challenged by Catholic organizations when its proscription included discrimination on the basis of sexual preference.

A (1) Voters who are neither on the Peremptory Order List or on the official Challenge List are presumed to be validly registered voters. For these voters there is no requirement that they must demonstrate proof of residency in order to vote. However, these voters may nevertheless be challenged by members of the the district board or by challengers whenever the district board or challenger shall know, suspect or believe the person not to be qualified or entitled to vote. Whenever the voter is challenged on the grounds of conviction of a crime or on the grounds of alienage, the district board shall follow the procedures set forth at N.J.S.A. 19: 15-19, 15-20, respectively. In all other cases it is the duty of the district board to ask all questions that are proper to determine the right of a voter to vote. The district board shall ask the voter any and all questions that were asked of the voter at registration and which appear on the signature copy register or registration binder. Whenever the answers to the questions or the signature of the voter do not correspond then it shall be the duty of the district board to challenge said voter. The district board at this time may offer this voter an oath or affirmation attesting to the voter's full qualifications and entitlement to vote. If the voter refuses to so take the oath or affirmation he or she will be deemed not qualified to vote. In every instance in which a voter is challenged the voter shall be given a ballot only upon a majority vote of the district board or a tie vote of the district board. The district board shall, in every instance in which a challenge is made, record said challenge and the determination of the board of same in the signature comparison record in the column "Sig. Comp.by" used at the election in which the challenge is made.

(2) Voters whose names appear on the official Challenge List promulgated by the Superintendent of Elections because of the Superintendent's doubts about their residency will be challenged at the polls. These voters must demonstrate their right to vote to the satisfaction of the district board whose duty it is to ask all questions that are proper to determine the right of a voter to vote. With respect to residency identification, these voters may be asked to provide sufficient proof of identification and residency which shall include but is not limited to any of the following: sample ballot, telephone bill, driver's license, credit card bill, utility bill, car registration, bank statement, tax statement or any other document which states the name and current address of the voter. These voters must also execute a challenge affidavit in order to vote and a ballot will only be issued to said voters only upon the majority vote of the district board or upon the tie vote of the district board. The district board shall, in every instance in which a voter whose name is on the official challenge list presents him or herself to vote, record said challenge and the determination of the board of same, in the column "Sig. Comp. by" used at the election in which the challenge is made.

B (1) The Hudson County Superintendent of Election's policy with respect to challenged voters shall be the same as that described above for the Hudson County Board of Elections except that:

(i) The Superintendent retains the power to establish the procedures to be used by the district boards for voters whose name appear on the official Challenge List including the power to amend the policies described above at paragraph A(2) for such voters provided that any changes, modifications or alterations sought to be made to paragraph A (2) shall be made in the manner specified in paragraph A (4); and

(ii) NOTHING herein shall be construed as limiting in any way the Superintendent's authority or practices concerning voters placed on the Peremptory Order List.

(2) The Superintendent of Elections shall provide sufficient affidavits to each district board in every election for use with challenged Voters as per the procedures set forth in paragraph A (1) above.